

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JOSHUA ANDREW SOTO,

Petitioner,

v.

ATCHLEY,

Respondent.

Case No. 1:20-cv-00671-AWI-SAB-HC

ORDER ADOPTING FINDINGS AND  
RECOMMENDATION, DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS, DIRECTING CLERK OF COURT  
TO CLOSE CASE, AND DECLINING TO  
ISSUE CERTIFICATE OF  
APPEALABILITY

(ECF No. 14)

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 29, 2020, the Magistrate Judge issued Findings and Recommendation that recommended dismissing the petition as an unauthorized successive petition. (ECF No. 14). The Findings and Recommendation were served Petitioner and contained notice that any objections were to be filed within thirty (30) days of the date of service of that order. To date, no objections have been filed, and the time for doing so has passed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of the case. Having carefully reviewed the entire file, the Court concludes that the Findings and Recommendation is supported by the record and proper analysis.

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances.

1 Miller-El v. Cockrell, 537 U.S. 322, 335–36 (2003). The controlling statute in determining  
2 whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

3 (a) In a habeas corpus proceeding or a proceeding under section  
4 2255 before a district judge, the final order shall be subject to  
5 review, on appeal, by the court of appeals for the circuit in which  
6 the proceeding is held.

7 (b) There shall be no right of appeal from a final order in a  
8 proceeding to test the validity of a warrant to remove to another  
9 district or place for commitment or trial a person charged with a  
10 criminal offense against the United States, or to test the validity of  
11 such person’s detention pending removal proceedings.

12 (c) (1) Unless a circuit justice or judge issues a certificate of  
13 appealability, an appeal may not be taken to the court of  
14 appeals from—

15 (A) the final order in a habeas corpus proceeding in which  
16 the detention complained of arises out of process issued by  
17 a State court; or

18 (B) the final order in a proceeding under section 2255.

19 (2) A certificate of appealability may issue under paragraph (1)  
20 only if the applicant has made a substantial showing of the  
21 denial of a constitutional right.

22 (3) The certificate of appealability under paragraph (1) shall  
23 indicate which specific issue or issues satisfy the showing  
24 required by paragraph (2).

25 If a court denies habeas relief on procedural grounds without reaching the underlying  
26 constitutional claims, the court should issue a certificate of appealability “if jurists of reason  
27 would find it debatable whether the petition states a valid claim of the denial of a constitutional  
28 right and that jurists of reason would find it debatable whether the district court was correct in its  
procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). “Where a plain procedural bar  
is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist  
could not conclude either that the district court erred in dismissing the petition or that the  
petitioner should be allowed to proceed further.” Id.

In the present case, reasonable jurists would not find the Court’s determination that  
Petitioner’s habeas petition should be dismissed debatable or wrong, or that Petitioner should be  
allowed to proceed further. Therefore, the Court declines to issue a certificate of appealability.

Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendation issued on May 29, 2020 (ECF No. 14) is ADOPTED IN FULL;
2. The petition for writ of habeas corpus is DISMISSED;
3. The Clerk of Court is DIRECTED to CLOSE the case; and
4. The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: August 10, 2020

  
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SENIOR DISTRICT JUDGE